

MONTANA LEGISLATIVE HISTORY

Chapter 394 1979

Bill H _____ S 54

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ c

Mar 16 ☒ c

_____ ☐ c

_____ ☐ c

Date Out Mar 16 ☒ c

S. Committee on Judiciary

Hearing Date(s) Jan 08 ☒ c

Feb 09 ☒ c

_____ ☐ c

_____ ☐ c

Feb 09 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

CHAPTER NO. 394,

SENATE BILL NO. 54

INTRODUCED BY TOWE

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

IN THE SENATE

January 4, 1979	Introduced and referred to Committee on Judiciary. On motion Senator Towe was added as author to the prefiled bill.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in.

IN THE SENATE

March 24, 1979

Returned from second house.
Concurred in. Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 54

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 30-14-111 AND 30-14-142, MCA, TO ALLOW FOR THE USE OF RESTRAINING ORDERS IN THE ENFORCEMENT OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-111, MCA, is amended to read:

"30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction or restraining order the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with ~~30-14-134~~ 30-14-115 at least 20 days before the hearing of the action where the relief to be sought is a temporary or permanent injunction.

The notice for a restraining order is governed by 27-19-305, MCA.

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions or restraining orders to restrain and prevent violations of this part, and such injunctions shall be issued without bond."

Section 2. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) Any person who violates the terms of an injunction or restraining order issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation. For the purposes of this section, the district court issuing an injunction or restraining order retains jurisdiction and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not

1 more than \$500 per violation.

2 (3) Any person who engages in a fraudulent course of
3 conduct declared unlawful by 30-14-103 shall upon conviction
4 be fined not more than \$2,000, imprisoned for not more than
5 1 year, or both, in the discretion of the court. Nothing in
6 this subsection limits any other provision of this part.

7 (4) For purposes of this section, a willful violation
8 occurs when the party committing the violation knew or
9 should have known that his conduct was a violation of
10 30-14-103."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 8, 1979

Page 1

The third meeting of this committee was called to order by Senator Lensink in room 331 at 10:00 a.m.

ROLL CALL: All members present

WITNESSES PRESENT TO TESTIFY:

H. David Cogley - Legislative Council - SB 4 & SB 25
Joan Mayer - Legislative Council - SB 4, SB 25, SB 54
Mike McGrath - Attorney General - SB 54
Brian Okerlund - University of Montana - SB 54
Carol Kirkland - Montana Petroleum Assn. - SB 54, SB 25
Dick Disney - Business Regulation - SB 54
Daniel Hougon - Business Regulation - SB 54

CONSIDERATION OF SENATE BILL 54:

Senator Towe briefly explained the bill, which would allow for the use of restraining orders in enforcement of Montana Unfair Trade Practices.

David Cogley from the Legislative Council testified as to a case that was filed in Beaverhead County. Senator Turnage questioned the wording on the bill and Senator Towe made a motion to amend the bill on page 2, line 1, after the word "a" insert the word "temporary". The motion was carried unanimously.

Senator Brown raised some questions concerning the bill. Mr. Mike McGrath from the Attorney General's office explained that they supported the bill but that there was another bill that was to come to this committee that would clarify temporary restraining orders from temporary and permanent injunctions. Senator Towe suggested that we hold this bill until we get the other bill in this committee. There were no opponents present in regard to this bill.

CONSIDERATION OF SENATE BILL 4:

Senator Galt, sponsor of this bill, gave an explanation of the bill which generally revises and clarifies the laws in regard to mortgages, pledges and liens. He introduced Dave Cogley from the Legislative Council, who perused the bill section by section. Senator Towe questioned a change in the bill on page 2, line 24 and made a motion to amend the bill on this line by striking the word "mortgagor" and inserting in lieu thereof the word "mortgagee". This amendment passed unanimously.

Senator Towe also offered an amendment that on page 3, line 4 and also on line 6, the words "mortgage" be deleted and the words, "execution" be inserted in lieu thereof.

This amendment also passed unanimously.

Senator Towe also proposed an amendment on page 6, line 6, to strike "16-2101 - 2104," which passed unanimously. Senator Towe also offered the following amendment: on page 6, line 7, following "45-1113," insert "and" and strike "and 52-213,". This motion passed unanimously.

Senator Galt made a motion that Senate Bill 4 do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 25:

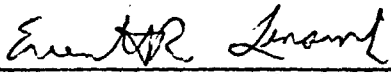
Senator Galt introduced David Cogley from the Legislative Council who gave an explanation of this bill and went over the bill section by section. He offered an amendment to the title as follows: Title, line 6, strike "THE LAW" and insert "TITLE 16, MCA,"; strike "ALCOHOLIC BEVERAGES" and insert "ALCOHOL AND TOBACCO" and in the title, line 7, strike "AND" and following "16-6-302," insert "AND 16-10-102,". This motion passed unanimously, Senator Galt recommended that the bill pass as amended. The vote was unanimous.

RECONSIDERATION OF SENATE BILL 54:

Joan Mayer gave an explanation of the bill to clarify restraining orders. There was some discussion and Senator Towe moved that there should be a notice made to the codifier and that Ms. Mayer should reword this correction and that a vote be postponed until the committee is able to see the wording of the amendment.

Senator Brown introduced his aide, Kim Ritter.

The meeting adjourned.



SENATOR LENSINK, Chairman Judiciary
Committee

SENATE

COMMITTEE

VISITORS' REGISTER

BILL _____

DATE 1/8/79

Please note bill no.

(check one)

SUPPORT OPPOSE

NAME

REPRESENTING

BILL #

MIKE McGRATH

ATTY GEN

54

✓

BREN O'KEEFE

Wofm

54

Kim Ritter

Carroll College

54

JIM KATZ

JACOB K. MARSHALL

Carol Kirkland

Mont. Petroleum Assn.

54.25

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7 , 1979

The twenty-ninth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 5:07 p.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 37:

Senator Towe commented that he does not feel comfortable with this bill and Senate Bill 129. He suggested that the Committee sit on the bills and let the other attorneys look them over during the interim.

Senator Turnage moved that Senate Bill 37 be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 129:

Senator Turnage moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 54:

Senator Towe moved that on page 1, line 19, after "or" the word "temporary" be inserted and on page 2, line 1, after "a" insert "temporary" and on line 6 after "of" insert "temporary" and on page 2, line 8, after "or" insert "temporary" and on page 2, line 16, after "or" insert "temporary". The motion carried unanimously.

Senator Towe moved that the bill be amended by adding a new section to read as follows: Section 3. Note to codifier. In the event that Senate Bill 243 passes, the reference on page 2, line 1 to 27-19-305 should be changed to section 4 of Senate Bill 243. The motion carried unanimously.

Senator Towe moved that this bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 243:

Senator Brown stated that if the Attorney General wants this bill, they should send us a copy as it should read.

Senator Turnage moved that we ask the Attorney General to offer this to the Committee in a readable form. The motion passed.

DISPOSITION OF SENATE BILL 153:

Senator Towe moved that on page 18, line 3, after "copy" insert "of a declaratory ruling". The motion carried unanimously.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 12, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Monday, March 12. All members were present except Representative Daily, absent and Representatives Roth and Anderson, who came in later.

Scheduled for hearing were Senate Bills 54, 393, 221, 491, 511, 283, 284, 301 and 409.

SENATE BILL NO. 409: Senator Regan. This bill revises the law relating to assault between spouses. I direct your attention to page 3, lines 17 and 18 concerning spouses living apart.

CAROL MITCHELL: Missoula Attorney. About a year and 1/2 ago there were contracts with the state to undertake a study on battered spouses. What we intended to do was to bring national research together with Montana research. The problem is pervasive. We are not talking about 1 out of 100, we are talking about 14 to 20% of married women. We have violence not in just one direction. Normally we define as a crime, the civil action. It is currently happening across the country that we are abolishing that old common law doctrine.

SHARON McVICKER: Great Falls. She explained that she was there as a battered spouse and gave the details of herself being thrown through a window by her husband. When I called the police, because we were married they would take no action. I think it is very important for you to know that women and wives are people too, and that they should have the right to protect themselves. The cycle is always repeated, the husband feels guilty, the wife forgives him and then it happens again.

MATT BOWER: Attorney. I represented Mrs. McVickers, and I have her permission to speak. She has now a serious permanent injury. She has no cause of action under existing state law.

JESSICA HUNTER: Missoula. I want to talk about SB 243, which will be heard tomorrow, also. I was married for 34 years to a college professor who was an alcoholic. I was admitted to a hospital 17 times, so please vote to try and give us some protection. It happens in the best of families.

ANN OWENS: Helena. I am dealing with the rape aspect of this bill. I have been separated since last May and my husband came to where I work and I was stabbed 17 times, and then he raped me. Rape is an act of violence. It is wrong even if you are married to the man.

CAROL MITCHELL: Attorney. I think it is pretty obvious the section as amended is inadequate.

MR. BROWN: Ten years, and then it will be notified that they must reregister, that is, all existing trademarks. You sign what you call an affidavit of non-user. However, there are a lot of people who don't want to go through this.

SENATOR TURNAGE: Discussed page 8, line 18, the Secretary of States office.

REPRESENTATIVE KEYSER: What are the sections that you are repealing?

MR. BROWN: The Trademark Act. This is a companion bill, and this will replace the trademarks. He elaborated briefly.

With no other discussion the hearing closed on Senate Bill 511.

SENATE BILL NO. 54: Senator Towe. This was at the request of the Department of Business Regulation. They have the jurisdiction over unfair trade practices. On page 1, lines 19 and 20, it gives them authority. There is a great deal of confusion. He went on to talk about temporary restraining orders and an order to show cause. The problem that developed is that this procedure was attempted in Missoula and because of the wording Judge Green refused a temporary restraining order and this bill clarifies that. He went through the bill and explained it.

DAN HOLDEN: Department of Business Regulation. I think Senator Towe has covered the bill. Because it is so important it should be specifically alluded to in the act.

DICK DISNEY: Department of Business Regulation. As a result of the ruling in the case in Missoula it would give them the option for 20 more days.

SENATOR TOWE: These matters could involve a lot of money and I think a temporary restraining order is justified.

REPRESENTATIVE SCULLY: What prevents a judge from granting a temporary injunction. Senator Towe answered, Judge Green said you cannot get this without notice. We are eliminating that ambiguity. If you want something without notice you want a temporary restraining order.

MR. HOLDEN: He explained the case in Missoula.

REPRESENTATIVE SCULLY: Why is it necessary to hold a temporary injunction to notice?

SENATOR TOWE: Lets make it clear that if you have the facts sufficient to get a temporary restraining order, the temporary restraining order and the temporary injunction is the same thing. Lets make it clear that they are entitled together and then the injunction would be after a hearing.

REPRESENTATIVE SCULLY: You already have the order if you can prove. Senator Towe explained the temporary restraining order and injunction, with notice, without notice and after trial.

MR. HOLDEN: He explained how the department files their case.

REPRESENTATIVE SCULLY: Have you ever filed a temporary injunction without notice and been denied one. The answer was "no", and then Mr. Scully asked why they hadn't done so. There was general confusion and noone could answer the question as to why this had not been done.

The hearing closed on Senate Bill 54.

SENATE BILL NO. 393: Senator Towe. He went through the bill and explained it. On page 2, he talked about the patient involvement. On page 3, the term "responsible person" is to help the attorney and the court proceedings. We changed that terminology because of the responsibility needed to be clarified. The term "seriously mentally ill" on the bottom of page 3 also should be explained. This would define further who could be committed. On the bottom of page 4 and through page 5, voluntary admission, we were stating that it should be at the time and in this amendment we are stating that it should be within 12 hours. On the bottom of page 5, it provides for a release within 5 days and we added some language. On the bottom of page 6, this is the notice to the minor of his rights. On the bottom of page 8, the waiver of rights, we are now providing that if a person is not making a knowing and responsible decision this would not waive the right to counsel. On the bottom of page 9, where the individual is detained once the proceedings have been brought where ought he be detained. This explains that. There is a distinction here when this would apply. He went on to talk of a jury trial and cases where it has been abused. Page 15 covers the hearing that is made following the six months commitment. There is no involuntary commitment in the state of Montana for more than one year. He explained the civil rights on page 16. The Senate Committee dealt with two items. One,

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 16, 1979

The Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Buildin. All members were present except Representatives Conroy and Seifert.

SENATE BILL NO. 217

Representative Keedy presented prepared amendments to the committee. He explained the amendments and the drafting of them. It would retain the exclusionary rule. The exclusionary rule, which requires the exclusion of otherwise admissible evidence, has consistently permitted the guilty to escape prosecution and punishment because the police have committed errors which in many cases have been technical in nature and in most cases have been made in good faith. Actual police lawlessness has seldom been deterred by the rule in cases where prosecutions have resulted since the exclusion of the evidence at trial carries no personal sanction against the police officer involved. Such police lawlessness has seldom been deterred by the rule where the police have had goals other than the prosecution of criminals since such activity is subject to virtually no judicial scrutiny and the rule provides no remedy for the innocent victims of such lawlessness. Application of the rule often deflects the truthfinding process and often frees the guilty. The disparity in cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Although the rule is thought to deter unlawful police activity because of the respect for the fourth amendment, it may well have the opposite effect of generating disrespect for the law and administration of justice. He went on to explain the bill as his amendments would affect it and what they would do.

Representative Scully questioned subsection 4, concerning civil liability and proof by a preponderance of evidence that there was a violation of the rights of a person protected by the fourth amendment. Some discussion followed.

Then followed discussion about the warrant and the civil damages, and further discussion about civil liability. Representative Kemmis asked about the provision of violation. Would they be weighed one against the other.

Larry Weinberg, staff attorney, explained the new section three as used in this bill. He explained the exclusive remedy and the laws of Montana relating to search and seizure.

After much further discussion Representative Keedy moved the amendments. He stated that on page 5, it would be necessary to strike the new section in the big sheet presented to the committee and adopt the new section 11 of the

Judiciary Committee
Executive session
March 16, 1979
Page 2

small sheet. On page 7, line 6, insert the word "seized". On page 7, subsection (2) strike "criteria of" and insert "criteria in".

Representative Holmes moved to amend the new section 11 on page 1, by striking "grossly". The amendment failed with only Representative Holmes voting "yes".

The question was called on the amendments of Representative Keedy. The motion to adopt the amendments carried with Representative Pavlovich voting "no".

Representative Keedy moved "be concurred in as amended". The motion carried with a roll call vote of 9 yes, 8 no and 2 absent. Mr. Keedy will carry.

SENATE BILL NO. 106: Representative Lory moved to amend on page 2, line 8 by striking "15-18-501 through 15-18-503" and inserting "2-18-501 through 2-18-503". The motion carried with the vote unanimous. Representative Keedy moved to amend page 1, line 14, by striking "\$19,500 and inserting \$22,500". The motion carried by unanimous vote after lengthy discussion.

Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry.

SENATE BILL NO. 88: Representative Kemmis moved to amend page 3, line 7, by striking "has" and inserting "have". Representative Keedy moved to amend page 4, line 5, by striking "in the future", and on page 4, line 19, by striking "hereof". The motion to amend carried in both cases by unanimous vote.

Representative Roth moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Roth will carry.

SENATE BILL NO. 54: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. Representative Kemmis will carry.

SENATE BILL NO. 243: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. This is a companion bill to 54. Representative Kemmis will carry.

SENATE BILL NO. 283: Representative Keedy moved to amend, page 7 by striking section 1 and reinserting

SENATE BILL NO. 54

INTRODUCED BY TOWE

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 30-14-111 AND 30-14-142, MCA, TO ALLOW FOR THE USE OF TEMPORARY RESTRAINING ORDERS IN THE ENFORCEMENT OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973."

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~~relief to be sought is a temporary or permanent injunction.~~
~~The notice for a TEMPORARY restraining order is governed by [27-19-305], MCA.~~

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2 more than \$500 per violation.

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4 conduct declared unlawful by 30-14-103 shall upon conviction
5 be fined not more than \$2,000, imprisoned for not more than
6 1 year, or both, in the discretion of the court. Nothing in
7 this subsection limits any other provision of this part.

8 (4) For purposes of this section, a willful violation
9 occurs when the party committing the violation knew or
10 should have known that his conduct was a violation of
11 30-14-103."

12 SECTION 3. CODIFICATION. IF SENATE BILL 243 BECOMES
13 LAW, THE REFERENCE IN SECTION 1, SUBSECTION (2), OF THIS ACT
14 TO 27-19-305 SHALL BE CHANGED BY THE CODE COMMISSIONER TO A
15 REFERENCE TO SECTION 7 OF SENATE BILL 243.

-End-